

103^D CONGRESS
1ST SESSION

S. 1427

To provide the necessary authority to manage the activities in Antarctica of United States scientific research expeditions and United States tourists, and to regulate the taking of Antarctic marine living resources, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 6 (legislative day, JUNE 30), 1993

Mr. KERRY introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To provide the necessary authority to manage the activities in Antarctica of United States scientific research expeditions and United States tourists, and to regulate the taking of Antarctic marine living resources, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Antarctic Scientific
5 Research, Tourism, and Marine Resources Act of 1993”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

1 (1) For well over a quarter of a century, sci-
2 entific investigation has been the main activity of
3 the Federal Government and United States nationals
4 in Antarctica.

5 (2) More recently Antarctica has become of in-
6 creasing interest to American tourists.

7 (3) As the lead civilian agency in Antarctica,
8 the National Science Foundation has long had the
9 responsibility of ensuring that United States sci-
10 entific expeditions and tourism, and their supporting
11 logistics operations, are conducted with an eye to
12 preserving the special values of the Antarctic region.

13 (4) The National Science Foundation, in close
14 cooperation with other scientific agencies, has grant-
15 ed many scientific and other permits under the Ant-
16 arctic Conservation Act of 1978, which implemented
17 the Agreed Measures for the Conservation of Ant-
18 arctic Fauna and Flora adopted under the auspices
19 of the Antarctic Treaty.

20 (5) The Antarctic Marine Living Resources
21 Convention Act of 1984 and the Antarctic Protec-
22 tion Act of 1990 reinforce this stewardship objective
23 by assigning the Under Secretary of Commerce for
24 Oceans and Atmosphere the duty to conserve the liv-

1 ing and nonliving marine resources of the Antarctic
2 region.

3 (6) The recently concluded Protocol on Envi-
4 ronmental Protection to the Antarctic Treaty, which
5 supplants the Agreed Measures on Fauna and Flora,
6 is the latest step in safeguarding Antarctica as a
7 natural reserve for science.

8 (7) Effective implementation of the Protocol for
9 the United States will be best and most efficiently
10 accomplished by keeping the National Science Foun-
11 dation in its lead agency role in managing scientific
12 activities in Antarctica, and by assigning other roles
13 to the Department of Commerce such as tourism
14 and resource regulation.

15 **SEC. 3. DEFINITIONS.**

16 In this Act, the following definitions apply:

17 (1) The term “Antarctica” means the area
18 south of 60 degrees south latitude.

19 (2) The term “Antarctic Treaty” means the
20 Antarctic Treaty signed in Washington, District of
21 Columbia, on December 1, 1959.

22 (3) The term “Director” means the Director of
23 the National Science Foundation.

1 (4) The term "minor or transitory impact"
2 means a minor or transitory impact as described in
3 Article 8 of the Protocol.

4 (5) The term "Protocol" means the Protocol on
5 Environmental Protection to the Antarctic Treaty,
6 done at Madrid on October 4, 1991, and all the
7 annexes thereto.

8 (6) The term "Secretary" means the Secretary
9 of Commerce.

10 (7) The term "vessel of the United States" has
11 the meaning provided in section 2101(46) of title
12 46, United States Code.

13 (8) The term "vessel subject to the jurisdiction
14 of the United States" means a foreign vessel that—

15 (A) is used to provide logistic support to
16 United States facilities in Antarctica; or

17 (B) transports passengers to, from, or in
18 Antarctica, if—

19 (i) there is an agreement between the
20 United States and the flag nation of the
21 foreign vessel regarding such transpor-
22 tation;

23 (ii) the flag nation of the foreign ves-
24 sel is a party to the Protocol and has re-
25 ferred the matter to the United States; or

1 (iii) the United States may exercise
2 jurisdiction over the vessel in accordance
3 with generally recognized principles of
4 international law.

5 **SEC. 4. REPRESENTATIVE, ARBITRATORS, AND INSPEC-**
6 **TORS.**

7 (a) REPRESENTATIVE TO COMMITTEE FOR ENVIRON-
8 MENTAL PROTECTION.—(1) The President shall appoint
9 an officer or employee of the United States as the United
10 States representative to the Committee for Environmental
11 Protection under the Protocol. Such officer or employee
12 shall have the technical qualifications required to serve in
13 such capacity.

14 (2) The person appointed under paragraph (1) shall
15 receive no additional compensation for serving as the
16 United States representative.

17 (b) ARBITRATORS.—(1) The Secretary of State shall
18 designate up to three arbitrators to serve on the Arbitral
19 Tribunal to be established under the Protocol.

20 (2) Each arbitrator shall be experienced in Antarctic
21 affairs, have a thorough knowledge of international law,
22 and have the highest reputation for fairness, competence,
23 and integrity.

1 (c) INSPECTORS.—The Secretary of State shall des-
2 ignate persons to serve as inspectors under Article 14 of
3 the Protocol.

4 **SEC. 5. UNLAWFUL ACTIVITIES.**

5 It is unlawful for any person—

6 (1) to conduct an activity within Antarctica, in-
7 cluding tourism, scientific research, expeditions, and
8 logistical support to United States facilities and
9 bases, in a manner inconsistent with the Protocol;

10 (2) to violate a provision of this Act, a regula-
11 tion promulgated under this Act, or the terms of a
12 permit issued under this Act;

13 (3) to refuse to permit an authorized officer or
14 employee of the United States to board a vessel of
15 the United States or a vessel subject to the jurisdic-
16 tion of the United States for the purpose of conduct-
17 ing any search or inspection in connection with the
18 enforcement of this Act;

19 (4) to assault, resist, oppose, impede, intimi-
20 date, or interfere with an authorized officer or em-
21 ployee of the United States in the conduct of any
22 search or inspection described in paragraph (3);

23 (5) to resist a lawful arrest or detention for an
24 act prohibited by this section;

1 (6) to interfere with, delay, or prevent, by any
2 means, the apprehension, arrest, or detention of an-
3 other person, knowing that such other person has
4 committed any act prohibited by this section; or

5 (7) to attempt to commit an act prohibited by
6 this section.

7 **SEC. 6. PERMITS AND OTHER REGULATORY CONTROLS.**

8 (a) ACTIVITIES REQUIRING PERMITS.—The following
9 activities shall not be conducted by any person in Antarc-
10 tica, except in accordance with a permit issued in accord-
11 ance with this section:

12 (1) The conduct or support by a person of a
13 tourism expedition or other nongovernmental expedi-
14 tion by vessel or aircraft to, from, or within Antarc-
15 tica.

16 (2) The operation of United States facilities
17 within Antarctica, including the construction or de-
18 commissioning of a United States base, building, or
19 airfield.

20 (3) An activity for which the Protocol requires
21 a permit.

22 (b) APPLICATIONS.—(1) Applications for permits
23 under this section shall be made in such manner and form,
24 and shall contain such information, as the Director with

1 the concurrence of the Secretary shall prescribe by regula-
2 tion.

3 (2) The Director shall publish notice in the Federal
4 Register of each application for a permit under this sec-
5 tion. The notice shall invite the submission by interested
6 parties, within 30 days after the date of publication of the
7 notice, of written data, comments, or views with respect
8 to the application. Information received by the Director
9 as a part of an application shall be available to the public
10 as a matter of public record.

11 (c) ACTION ON CERTAIN PERMIT APPLICATIONS.—

12 (1) When the Director receives an application for a permit
13 under this section to undertake an action to which a law
14 administered by another Federal agency applies, the Di-
15 rector shall refer the application to such agency for review
16 and appropriate action.

17 (2) After receiving a copy of an application from the
18 Director under paragraph (1), the head of the Federal
19 agency concerned shall promptly determine and notify the
20 Director whether or not an action proposed in the applica-
21 tion would be prohibited by a law administered by such
22 agency or otherwise requires a permit or other authoriza-
23 tion under a law administered by such agency.

24 (3) If the head of such agency notifies the Director
25 that an action proposed in the application would be pro-

hibited by a law administered by such agency, the Director may not issue a permit under this section with respect to the proposed action.

(4) If the head of such agency notifies the Director that an action proposed in the application requires a permit or other authorization under a law administered by such agency, the Director may not issue a permit under this section with respect to the proposed action unless the other required permit or authorization is issued by such agency and a copy thereof is submitted to the Director.

(d) ISSUANCE OF PERMITS.—(1) As soon as practicable after receiving an application for a permit under this section, or, in the case of an application to which subsection (c) applies, as soon as practicable after the applicable requirements of that subsection are complied with, the Director shall issue, or deny the issuance of, the permit. Within 10 days after the date of the issuance or denial, the Director shall publish notice of the issuance or denial in the Federal Register, including a description of any permit terms and conditions.

(2) Subject to paragraph (3), a permit may not be issued under this section for an activity unless—

(A) the application for the permit contains sufficient information to allow the Director to make a prior assessment of, and informed judgment about,

1 the possible impacts of the proposed activity on Ant-
2 arctica, including cumulative impacts, and on the
3 value of Antarctica for the conduct of scientific
4 research;

5 (B) if required under section 7, an environ-
6 mental impact statement has been prepared, and cir-
7 culated by the Secretary of State in accordance with
8 the Protocol; and

9 (C) the proposed activity is consistent with this
10 Act and the Protocol.

11 (3) If the proposed activity is the expansion, con-
12 struction, or decommissioning of a United States base,
13 building, or air field, or the operation of a United States
14 base, building, or air field that was expanded or con-
15 structed after the date of enactment of this Act, the Direc-
16 tor may not issue a permit for that activity unless the Di-
17 rector determines that—

18 (A) the requirements of paragraph (2) are com-
19 plied with;

20 (B) there is a substantial national need for the
21 activity; and

22 (C) there is no practicable alternative that will
23 have a less adverse impact on the environment.

24 (4) If the proposed activity is a tourism activity, an
25 activity described in paragraph (3), or an introduction or

1 taking of an Antarctic marine living resource to which the
2 Antarctic Marine Living Resources Convention Act of
3 1984 applies, or if the Director determines that the activ-
4 ity will have more than a minor or transitory impact, the
5 Director may issue a permit only if the Secretary concurs.

6 (5) Activities regulated by an annex to the Protocol
7 and which are authorized under a permit issued by the
8 Director are considered to be in compliance with Article
9 3 of the Protocol.

10 (e) TERMS AND CONDITIONS OF PERMITS.—Each
11 permit issued under this section shall specify the period
12 during which the permit is valid and such other terms and
13 conditions as the Director (or, if applicable, the head of
14 any Federal agency described in subsection (c)) considers
15 appropriate to ensure that an action authorized under the
16 permit is carried out in a manner consistent with the Pro-
17 tocol, this Act, and the regulations promulgated under this
18 Act.

19 (f) JUDICIAL REVIEW.—(1) Any applicant for a per-
20 mit may obtain judicial review pursuant to chapter 7 of
21 title 5, United States Code, of—

22 (A) the terms and conditions of a permit issued
23 by the Director under this section; or

24 (B) refusal of the Director to issue a permit.

1 Review under this subsection may be initiated by fil-
2 ing a petition for review in the United States district court
3 for the district wherein the applicant for a permit resides
4 or that is the principal place of business of the applicant,
5 or in the United States District Court for the District of
6 Columbia, within 60 days after the date on which the per-
7 mit is issued or denied.

8 (g) MODIFICATION, SUSPENSION, AND REVOCATION.—(1) The Director may modify, suspend, or revoke,
9 in whole or in part, a permit issued under this section—

11 (A) if there is a change in conditions which
12 makes the permit inconsistent with this Act or the
13 provisions of the Protocol, including Article 3 of the
14 Protocol;

15 (B) in order to make the permit consistent with
16 a change made after the date of issuance of the per-
17 mit to a regulation promulgated under section 9; or

18 (C) in a case in which there has been a viola-
19 tion of a term or condition of the permit, or of a
20 regulation promulgated under this Act or a provision
21 of this Act relating to that permit.

22 (2) If the Director proposes a modification, suspen-
23 sion, or revocation of a permit under this subsection, the
24 permittee shall be afforded opportunity, after due notice,
25 for a hearing by the Director with respect to the proposed

1 modification, suspension, or revocation. If a hearing is re-
2 quested, the action proposed by the Director shall not take
3 effect before a decision is issued after the hearing, unless
4 the proposed action is taken by the Director to protect
5 the Antarctic environment, and its dependent and associ-
6 ated ecosystems, or to prevent the loss of human life.

7 (3) The Director shall publish notice of the modifica-
8 tion, suspension, or revocation of a permit in the Federal
9 Register within 10 days after the date of the Director's
10 decision, including the reasons for the action.

11 (h) PERMIT FEES.—The Director shall establish and
12 charge fees for processing applications for permits under
13 this section. The amount of the fees shall be commensu-
14 rate with the administrative costs incurred by the Director
15 in processing the application, but shall not include the
16 costs to the Director of preparing an environmental im-
17 pact statement that is required under section 7.

18 (i) OTHER REGULATORY CONTROLS.—(1) The Ad-
19 ministrator of the Environmental Protection Agency has
20 overall responsibility for the implementation of the provi-
21 sions of Annex III of the Protocol. In carrying out the
22 responsibility, the Administrator shall—

23 (A) prohibit incineration in Antarctica; and

24 (B) require that discharges into the sea in Ant-
25 arctica after January 1, 1995, shall meet secondary

1 treatment standards that are the same as those ap-
2 plicable to the navigable waters of the United States.

3 (2) The Federal Facilities Compliance Act of 1992
4 (Public Law 102–386; 106 Stat. 1505), including amend-
5 ments by that Act to other provisions of law, and the
6 Clean Air Act (42 U.S.C. 7401 et seq.) apply in Antarc-
7 tica. Nothing in the preceding sentence shall be construed
8 to affect the applicability of any other law in Antarctica.

9 **SEC. 7. ENVIRONMENTAL ASSESSMENT OF ACTIVITIES**
10 **WITHIN ANTARCTICA.**

11 (a) FEDERAL ACTIVITIES.—(1) The head of each
12 Federal agency which plans to conduct an activity in Ant-
13 arctica (including the conduct of scientific research and
14 the provision of logistical support to United States facili-
15 ties), or plans to take action on an application for a permit
16 to conduct such an activity, shall review the activity in
17 accordance with Annex I of the Protocol. The agency head
18 shall consult with the Director in conducting the review.
19 If the agency head determines that the proposed activity
20 will have less than a minor or transitory impact, and the
21 Director does not disagree, the activity may proceed if the
22 agency monitors the activity to verify that less than a
23 minor or transitory impact results from the activity.

1 (2) If the agency head determines that the proposed
2 activity will have at least a minor or transitory impact,
3 the agency shall prepare an environmental assessment.

4 (3) If the agency head determines, through the prepa-
5 ration of an environmental assessment or otherwise, that
6 a proposed activity will have more than a minor or transi-
7 tory impact, the agency shall prepare an environmental
8 impact statement on the proposed activity.

9 (4) If the Secretary, the Director, or the Adminis-
10 trator of the Environmental Protection Agency disagrees
11 with an agency determination under this section that a
12 proposed activity will have a minor or transitory impact,
13 or less, the matter shall be referred to the President for
14 review and no decision shall be taken to proceed with or
15 permit the activity until the President takes action. On
16 the basis of the review, the President may require the
17 agency head to prepare an environmental assessment or
18 environmental impact statement on the proposed activity.

19 (b) TOURISM AND OTHER NONGOVERNMENTAL AC-
20 TIVITIES.—The Secretary, in consultation with the Direc-
21 tor, shall issue regulations establishing procedures for the
22 environmental assessment of tourism and other non-
23 governmental activities conducted by any person within
24 Antarctica, consistent with the applicable law and the
25 Protocol.

1 (c) REVIEW.—No decision shall be taken to proceed
2 with or permit an activity for which an environmental im-
3 pact statement is prepared under this section until—

4 (1) the draft statement has been made publicly
5 available for at least 90 days and circulated by the
6 Secretary of State in accordance with Article 3 of
7 Annex I to the Protocol;

8 (2) there has been an opportunity for consider-
9 ation of the draft statement at a meeting of the Ant-
10 arctic Treaty Consultative Parties, except that no
11 decision to proceed with a proposed activity shall be
12 delayed through the operation of this paragraph for
13 more than 15 months from the circulation of the
14 draft statement;

15 (3) a final statement has been made publicly
16 available at least 60 days before the commencement
17 of the proposed activity; and

18 (4) monitoring procedures have been established
19 to assess and verify the impacts of the activity.

20 (d) EXCEPTION.—This section shall not apply in
21 cases of extreme emergency relating to the prevention of
22 the loss of human life or involving the safety of a ship
23 or aircraft.

1 **SEC. 8. MONITORING, INSPECTIONS, PLANS, REPORTS.**

2 (a) MONITORING.—The Director, in consultation
3 with the Secretary and the heads of other appropriate
4 Federal agencies, shall develop and implement a plan for
5 the monitoring of activities within Antarctica, including
6 the operation of United States facilities, scientific re-
7 search, and expeditions, that have more than a minor or
8 transitory impact.

9 (b) INSPECTIONS.—The Secretary of State may agree
10 on behalf of the United States to a system of observation
11 and inspection and to interim arrangements pending the
12 establishment of such a system pursuant to Article 14 of
13 the Protocol.

14 (c) LAND-BASED CONTINGENCY PLANS.—The Direc-
15 tor, in consultation with the heads of appropriate Federal
16 agencies, shall develop requirements for contingency plans
17 for response to incidents caused by persons within Antarc-
18 tica with potential adverse effects as described in Article
19 15 of the Protocol.

20 (d) REPORTS.—The Secretary of State shall—

21 (1) circulate to all parties to the Antarctic
22 Treaty, after notice and public comment, all inspec-
23 tion and compliance reports and all actions taken to
24 ensure compliance with the Protocol, including no-
25 tice of activities undertaken in cases of emergency;
26 and

1 (2) bring promptly to the attention of other
2 parties to the Antarctic Treaty all known incidents
3 of noncompliance with the Protocol by the nationals
4 of those parties.

5 **SEC. 9. REGULATIONS.**

6 (a) IN GENERAL.—The Director, the Secretary, and
7 the Secretary of the department in which the Coast Guard
8 is operating, after consultation with appropriate officials,
9 shall promulgate such regulations as are appropriate to
10 implement this Act, taking into account the Antarctic
11 Treaty, any measures adopted thereunder, the Protocol,
12 and any awards issued thereunder by a competent
13 tribunal.

14 (b) SCHEDULE FOR REGULATIONS.—The regulations
15 required by this section shall be promulgated within two
16 years after the date of enactment of this Act.

17 **SEC. 10. CIVIL PENALTIES.**

18 (a) ASSESSMENT OF PENALTIES.—(1) Any person
19 who is found by the Director or the Secretary, after notice
20 and opportunity for a hearing in accordance with sub-
21 section (b), to have committed any act prohibited by sec-
22 tion 5 shall be liable to the United States for a civil pen-
23 alty. The amount of the civil penalty shall not exceed
24 \$25,000 for each violation. Each day of a continuing viola-
25 tion shall constitute a separate offense. The amount of any

1 civil penalty shall be assessed by the Director or the Sec-
2 retary by written notice. In determining the amount of the
3 penalty, the Director or the Secretary shall take into ac-
4 count the nature, circumstances, extent, and gravity of the
5 prohibited acts committed, and, with respect to the viola-
6 tor, the degree of culpability, any history of prior offenses,
7 ability to pay, and such other matters as justice may re-
8 quire, to the extent that the information is reasonably
9 available to the Director or the Secretary.

10 (2) The Director or the Secretary may compromise,
11 modify, or remit, with or without conditions, any civil pen-
12 alty which may be imposed under this section.

13 (b) HEARINGS.—Hearings for the assessment of civil
14 penalties under subsection (a) shall be conducted in ac-
15 cordance with section 554 of title 5, United States Code.
16 For the purposes of conducting any such hearing, the Di-
17 rector or the Secretary may issue subpoenas for the at-
18 tendance and testimony of witnesses and the production
19 of relevant papers, books, and documents, and may admin-
20 ister oaths. Witnesses summoned shall be paid the same
21 fees and mileage that are paid to witnesses in the courts
22 of the United States. In case of contempt or refusal to
23 obey a subpoena served upon any person pursuant to this
24 subsection, the district court of the United States for any
25 district in which the person is found, resides, or transacts

1 business, upon application by the United States and after
2 notice to the person, shall have jurisdiction to issue an
3 order requiring the person to appear before the Director
4 or the Secretary and either give testimony or produce doc-
5 uments or both, and any failure to obey such order of the
6 court may be punished by the court as a contempt thereof.

7 (c) REVIEW OF CIVIL PENALTY.—Any person against
8 whom a civil penalty is assessed under subsection (a) may
9 obtain review thereof in the appropriate district court of
10 the United States by filing a complaint in the court within
11 30 days after the date of the order and by simultaneously
12 sending a copy of the complaint by certified mail to the
13 Director or the Secretary, the Attorney General, and the
14 appropriate United States Attorney. The Director or the
15 Secretary shall promptly file in the court a certified copy
16 of the record upon which the violation was found or the
17 penalty imposed, as provided in section 2112 of title 28,
18 United States Code. The court shall set aside the findings
19 and order of the Director or the Secretary if the findings
20 and order are found to be unsupported by substantial evi-
21 dence, as provided in section 706(2)(E) of title 5, United
22 States Code.

23 (d) RECOVERY OF CIVIL PENALTIES.—The Attorney
24 General may seek to recover in any appropriate district
25 court of the United States (1) any civil penalty imposed

1 under this section that has become a final and
2 unappealable order and has been referred to the Attorney
3 General by the Director or the Secretary, or (2) any final
4 judgment rendered under this section in favor of the
5 United States by an appropriate court. In such action, the
6 validity and appropriateness of the final order imposing
7 the civil penalty shall not be subject to review.

8 (e) PENALTIES UNDER OTHER LAWS.—The assess-
9 ment of a civil penalty under subsection (a) for any act
10 shall not be considered to preclude the assessment of a
11 civil penalty for the act under any other law.

12 (f) CONSULTATION.—The Director and the Secretary
13 shall consult on an ongoing basis to ensure that the func-
14 tions authorized under this section are carried out effec-
15 tively and fairly.

16 **SEC. 11. CRIMINAL OFFENSES.**

17 (a) OFFENSES.—A person is guilty of an offense if
18 that person knowingly commits an act prohibited by
19 section 5.

20 (b) PUNISHMENT.—An offense under subsection (a)
21 is punishable by imprisonment for not more than one year,
22 or a fine under title 18, United States Code, or both.

23 (c) OFFENSES UNDER OTHER LAWS.—A conviction
24 under subsection (a) for any act shall not be considered
25 to preclude a conviction for the act under any other law.

1 **SEC. 12. ENFORCEMENT.**

2 (a) RESPONSIBILITY.—The provisions of this Act
3 shall be enforced by the Director, the Secretary, and the
4 Secretary of the department in which the Coast Guard is
5 operating. The Director and the Secretaries may utilize
6 by agreement, on a reimbursable basis or otherwise, the
7 personnel, services, and facilities (including aircraft and
8 vessels) of any other department or agency of the United
9 States in the performance of such duties.

10 (b) POWERS OF AUTHORIZED OFFICERS AND EM-
11 PLOYEES.—An officer or employee of the United States
12 who is authorized, by the Director, the Secretary, the Sec-
13 retary of the department in which the Coast Guard is op-
14 erating, or the head of a department or agency of the
15 United States which has entered into an agreement with
16 the Director or either Secretary under subsection (a), to
17 enforce the provisions of this Act, a regulation promul-
18 gated under this Act, or a permit issued under this Act
19 may, in enforcing such provision—

20 (1) secure, execute, and serve an order, war-
21 rant, subpoena, or other process, which is issued
22 under the authority of the United States or by a
23 court of competent jurisdiction;

24 (2) search without warrant a person, place, ve-
25 hicle, or aircraft subject to the jurisdiction of the
26 United States if there are reasonable grounds to be-

1 lieve that a person has committed an act prohibited
2 by section 5;

3 (3) with or without a warrant, board and
4 search or inspect a vessel of the United States or
5 vessel subject to the jurisdiction of the United
6 States—

7 (4) seize without warrant—

8 (A) an evidentiary item if there are reason-
9 able grounds to believe that a person has com-
10 mitted an act prohibited by section 5;

11 (B) any resource with respect to which
12 such an act is committed;

13 (C) a vessel of the United States (includ-
14 ing its gear, furniture, appurtenances, stores,
15 and cargo), a vessel subject to the jurisdiction
16 of the United States (including its gear, fur-
17 niture, appurtenances, stores, and cargo), a ve-
18 hicle, aircraft, or other means of transportation
19 that is subject to the jurisdiction of the United
20 States, used in connection with such an act;
21 and

22 (D) a gun, trap, net, or equipment used in
23 connection with such an act;

1 (5) Offer and pay rewards for information
2 which may lead to the apprehension of persons vio-
3 lating such provisions;

4 (6) make inquiries, and administer to or take
5 from, a person an oath, affirmation, or affidavit,
6 concerning a matter which is related to the enforce-
7 ment of such provisions;

8 (7) in coordination with the Secretary of the
9 Treasury, detain for inspection and inspect a pack-
10 age, crate, or other container, including its contents
11 and all accompanying documents, upon importation
12 into or exportation from the United States;

13 (8) make an arrest with or without a warrant
14 with respect to any act prohibited by section 5, if
15 such officer or employee has reasonable grounds to
16 believe that the person to be arrested is committing
17 such act in his or her presence or view or has com-
18 mitted such act;

19 (9) exercise enforcement powers conferred on
20 the officer or employee under a system of observa-
21 tion and inspection, or interim arrangements pend-
22 ing the establishment of such a system, which the
23 President has agreed to on behalf of the United
24 States; and

1 (10) exercise any other authority which the offi-
2 cer or employee is permitted by law to exercise.

3 (c) SEIZURE.—A property or item seized pursuant to
4 subsection (b) shall be held by any officer or employee of
5 the United States who is authorized by the Director, the
6 Secretary, or the Secretary of the department in which
7 the Coast Guard is operating, pending the disposition of
8 civil or criminal proceedings concerning the violation relat-
9 ing to the property or item or the institution of an action
10 in rem for the forfeiture of such property or item. Such
11 authorized officer or employee may, upon the order of a
12 court of competent jurisdiction, either release the seized
13 property or item to the wild or destroy the property or
14 item if the cost of maintenance of the property or item
15 pending the disposition of the case is greater than the le-
16 gitimate market value of the property or item. The author-
17 ized officer or employee and all officers or employees act-
18 ing by or under his or her direction shall be indemnified
19 from any penalties or actions for damages for so releasing
20 or destroying the property or item, unless the actions of
21 the officer or employee are grossly negligent or constitute
22 willful misconduct. The authorized officer or employee
23 may, in lieu of holding such property or item, permit the
24 owner or consignee thereof to post a bond or other satis-
25 factory surety.

1 (d) FORFEITURE.—(1) A vessel of the United States
2 (including its gear, furniture, appurtenances, stoves, and
3 cargo), or vessel, vehicle, or aircraft or other means of
4 transportation subject to the jurisdiction of the United
5 States, which is used in connection with an act prohibited
6 by section 5, and a gun, trap, net, and other equipment
7 used in connection with such act, shall be subject to for-
8 feiture to the United States.

9 (2) Upon the forfeiture to the United States of an
10 item described in paragraph (1), or upon the abandonment
11 or waiver of any claim to any such item, it shall be dis-
12 posed of by the Director, the Secretary, or the Secretary
13 of the department in which the Coast Guard is operating,
14 as the case may be, in such a manner, consistent with
15 the purposes of this Act, as may be prescribed by
16 regulation.

17 (e) APPLICATION OF LAWS.—All provisions of law re-
18 lating to the seizure, forfeiture, and condemnation of prop-
19 erty (including vessels) for violation of the customs laws,
20 the disposition of the property or the proceeds from the
21 sale thereof, and the remission or mitigation of the forfeit-
22 ure, shall apply to the seizures and forfeitures incurred,
23 or alleged to have been incurred, and the compromise of
24 claims, under the provisions of this Act, insofar as such
25 provisions of law are applicable and not inconsistent with

1 the provisions of this Act; except that all powers, rights,
2 and duties conferred or imposed by the customs laws may,
3 for the purposes of this Act, also be exercised or performed
4 by the Director, the Secretary, or the Secretary of the de-
5 partment in which the Coast Guard is operating, or by
6 such officers or employees of the United States as the Di-
7 rector, the Secretary, or the Secretary of the department
8 in which the Coast Guard is operating may designate.

9 (f) EMERGENCY POWERS.—Notwithstanding any
10 other provision of this Act, the Director, the Secretary,
11 or the Secretary of the department in which the Coast
12 Guard is operating, upon receipt of evidence that an activ-
13 ity by a person is presenting, or is threatening to present,
14 an imminent and substantial endangerment to the envi-
15 ronment of Antarctica or to the health and safety of per-
16 sons residing therein, may commence a civil action on be-
17 half of the United States in the appropriate district court
18 of the United States to immediately restrain that person
19 causing the activity to stop the activity or to take such
20 other action as may be necessary.

21 (g) INSPECTION FEES.—The Director, the Secretary,
22 and the Secretary of the department in which the Coast
23 Guard is operating may charge reasonable fees for the ex-
24 penses of the United States incurred in carrying out in-

1 inspections and in transferring, boarding, handling, or stor-
2 ing evidentiary items seized or forfeited under this Act.

3 **SEC. 13. IN REM LIABILITY; JURISDICTION OF COURTS.**

4 (a) IN REM LIABILITY.—A vessel of the United
5 States, or a vessel subject to the jurisdiction of the United
6 States, that is operated in violation of the Protocol, this
7 Act, or the regulations promulgated under this Act is lia-
8 ble in rem for any civil penalty assessed under section 10
9 or any fine imposed under section 11, and may be pro-
10 ceeded against in any district court of the United States
11 having jurisdiction. The penalty or fine shall constitute a
12 lien on the vessel which may be recovered in an action
13 in rem in the district court of the United States having
14 jurisdiction.

15 (b) JURISDICTION OF COURTS.—The district courts
16 of the United States shall have jurisdiction over any case
17 or controversy arising under the provisions of this Act or
18 of any regulation or permit issued under this Act.

19 **SEC. 14. CITIZEN SUITS.**

20 (a) AUTHORITY TO BRING CIVIL ACTIONS.—Except
21 as provided in subsections (c) and (d), any person may
22 commence a civil action on that person's own behalf—

23 (1) against any person (including the United
24 States and any other governmental instrumentality
25 or agency, to the extent permitted by the eleventh

1 amendment to the Constitution) who is alleged to
2 have committed an act prohibited under section 5 of
3 this Act, section 306 of the Antarctic Marine Living
4 Resources Convention Act of 1984 (16 U.S.C.
5 2435), or section 4 of the Antarctic Protection Act
6 of 1990 (16 U.S.C. 2463); or

7 (2) against the Director, the Secretary, or any
8 other head of a Federal agency where there is al-
9 leged a failure of the Director, the Secretary, or
10 such other agency head to perform any act or duty
11 under this Act, the Antarctic Marine Living Re-
12 sources Convention Act of 1984, or the Antarctic
13 Protection Act of 1990, which is not discretionary
14 with the Director, the Secretary, or such other agen-
15 cy head.

16 (b) RELIEF.—The appropriate district court of the
17 United States shall have jurisdiction in actions brought
18 under subsection (a)(1) to enforce the prohibition con-
19 cerned, to order such action as may be necessary to correct
20 the violation, and to impose any civil penalty provided for
21 the violation. The appropriate district court shall have ju-
22 risdiction in actions brought under subsection (a)(2) to
23 order the Director, the Secretary, or the affected other
24 agency head to perform the act or duty concerned.

1 (c) RULES APPLICABLE TO SUBSECTION (a)(1) AC-
2 TIONS.—(1) No action may be commenced under sub-
3 section (a)(1) before 60 days after the plaintiff has given
4 notice of the alleged violation to each of the following:

5 (A) The Director and the Secretary.

6 (B) Any alleged violator of the prohibition.

7 Notice under this paragraph shall be given in such manner
8 as the Director shall prescribe by regulation.

9 (2) No action may be commenced under subsection
10 (a)(1) if the Director or Secretary has commenced and
11 is diligently pursuing an action under this Act, the Ant-
12 arctic Marine Living Resources Convention Act of 1984,
13 or the Antarctic Protection Act of 1990, to require compli-
14 ance with the prohibition concerned.

15 (d) RULES APPLICABLE TO SUBSECTION (a)(2) AC-
16 TIONS.—No action may be commenced under subsection
17 (a)(2) before the 60th day following the date on which
18 the plaintiff gives notice to the Director, the Secretary,
19 or the affected other agency head that the plaintiff will
20 commence such action.

21 (e) COSTS.—The court, in issuing any final order in
22 any action commenced pursuant to this section, may
23 award costs of litigation (including reasonable attorney
24 and expert witness fees) to the prevailing or the substan-
25 tially prevailing party whenever the court determines such

1 an award is appropriate. The court may, if a temporary
 2 restraining order or preliminary injunction is sought, re-
 3 quire the filing of a bond or equivalent security in accord-
 4 ance with the Federal Rules of Civil Procedure.

5 (f) INTERVENTION.—In any action under this sec-
 6 tion, the United States if not a party may intervene as
 7 a matter of right.

8 (g) OTHER RIGHTS.—This section does not restrict
 9 any right that any person may have under any statute or
 10 common law to seek enforcement of any standard or limi-
 11 tation or to seek any other relief.

12 **SEC. 15. AMENDMENTS TO ANTARCTIC MARINE LIVING RE-**
 13 **SOURCES CONVENTION ACT OF 1984.**

14 (a) FINDINGS.—Section 302 of the Antarctic Marine
 15 Living Resources Convention Act of 1984 (16 U.S.C.
 16 2431) is amended by striking “and” at the end of para-
 17 graph (5), by redesignating paragraph (6) as paragraph
 18 (7), and by inserting immediately after paragraph (5) the
 19 following new paragraph:

20 “(6) safeguards provided in the Protocol con-
 21 cerning the taking of or harmful interference with
 22 marine living resources provide important supple-
 23 mentary protection; and”.

1 (b) DEFINITIONS.—(1) Section 303(2) of the Ant-
2 arctic Marine Living Resources Convention Act of 1984
3 (16 U.S.C. 2432(2)) is amended—

4 (A) by inserting “invertebrates, and plants,”
5 immediately before “found south”; and

6 (B) by inserting “, other than nonindigenous
7 animals and plants introduced from north of the
8 Convergence” immediately before the period at the
9 end.

10 (2) Section 303(5)(A) of the Antarctic Marine Living
11 Resources Convention Act of 1984 (16 U.S.C.
12 2432(5)(A)) is amended by inserting “, including any tak-
13 ing or harmful interference prohibited under Article 3 of
14 Annex II to the Protocol” immediately before the semi-
15 colon.

16 (3) Section 303 of the Antarctic Marine Living Re-
17 sources Convention Act of 1984 (16 U.S.C. 2432) is
18 amended—

19 (A) by redesignating paragraphs (9) through
20 (11) as paragraphs (10) through (12), respectively;
21 and

22 (B) by inserting immediately after paragraph
23 (8) the following new paragraph:

24 “(9) PROTOCOL.—The term ‘Protocol’ means
25 the Protocol on Environmental Protection to the

1 Antarctic Treaty, done at Madrid on October 4,
2 1991, and all annexes thereto.”.

3 (c) UNLAWFUL ACTIVITIES.—(1) Section 306(1) of
4 the Antarctic Marine Living Resources Convention Act of
5 1984 (16 U.S.C. 2435(1)) is amended by inserting “or
6 the Protocol,” immediately after “violation of the provi-
7 sions of the Convention”.

8 (2) Section 306 of the Antarctic Marine Living Re-
9 sources Convention Act of 1984 (16 U.S.C. 2435) is
10 amended by redesignating paragraphs (4) through (7) as
11 paragraphs (5) through (8), respectively, and inserting im-
12 mediately after paragraph (3) the following new para-
13 graph:

14 “(4) to introduce a dog into the area south of
15 60 degrees south latitude or, unless authorized by a
16 permit issued under section 6 of the Antarctic Sci-
17 entific Research, Tourism, and Marine Resources
18 Act of 1993, to introduce any other nonindigenous
19 animal or plant into such area;”.

20 (d) CONFORMING AMENDMENTS.—(1) Section
21 309(a) of the Antarctic Marine Living Resources Conven-
22 tion Act of 1984 (16 U.S.C. 2438(a)) is amended by strik-
23 ing “(4), (5), (6), or (7)” and inserting in lieu thereof
24 “(5), (6), (7), or (8)”.

1 (2) Section 310(b)(8) of the Antarctic Marine Living
2 Resources Convention Act of 1984 (16 U.S.C. 2439(b)(8))
3 is amended by striking “(4), (5), (6), or (7)” and inserting
4 in lieu thereof “(5), (6), (7), or (8)”.

5 **SEC. 16. AMENDMENTS TO THE ACT TO PREVENT POLLU-**
6 **TION FROM SHIPS.**

7 (a) DEFINITIONS.—Section 2(a) of the Act to Pre-
8 vent Pollution from Ships (33 U.S.C. 1901(a)) is amend-
9 ed—

10 (1) in paragraph (8) by striking “and” at the
11 end;

12 (2) in paragraph (9) by striking the period and
13 inserting in lieu thereof a semicolon; and

14 (3) by adding at the end the following new
15 paragraphs:

16 “(10) ‘Antarctica’ means the area south of 60
17 degrees south latitude, including all ice shelves; and

18 “(11) ‘Antarctic Protocol’ means the Protocol
19 on Environmental Protection to the Antarctic Trea-
20 ty, done at Madrid on October 4, 1991, and all
21 annexes thereto.”.

22 (b) APPLICATION OF ANNEX IV.—Section 2 of the
23 Act to Prevent Pollution from Ships (33 U.S.C. 1901) is
24 amended by adding at the end the following new sub-
25 section:

1 “(c) The requirements of Annex IV to the Antarctic
2 protocol shall apply in Antarctica—

3 “(1) to all ships described in section 3(a)(1);
4 and

5 “(2) to all other ships over which the United
6 States has jurisdiction, including all ships engaged
7 in or supporting United States Antarctic oper-
8 ations.”

9 (c) SHIPS COVERED BY THE ACT.—Section 3 of the
10 Act to Prevent Pollution from Ships (33 U.S.C. 1902) is
11 amended—

12 (1) in subsection (a) by striking “and” after the
13 semicolon at the end of paragraph (3), by striking
14 the period at the end of paragraph (4) and inserting
15 in lieu thereof “; and”, and by adding at the end the
16 following new paragraph:

17 “(5) with respect to Annex IV to the Antarctic
18 Protocol, to all ships described in paragraph (1) and
19 to all other ships over which the United States has
20 jurisdiction, including all ships engaged in or sup-
21 porting United States Antarctic operations.”; and

22 (2) in subsection (b)(2)—

23 (A) in subparagraph (A) by striking “sub-
24 paragraph (B)” and inserting in lieu thereof
25 “subparagraph (C)”;

1 (B) by redesignating subparagraph (B) as
2 subparagraph (C); and

3 (C) by inserting immediately after sub-
4 paragraph (A) the following new subparagraph:

5 “(B) Notwithstanding any provision of the Antarctic
6 Protocol and subject to subparagraph (C), the require-
7 ments of Annex IV to that Protocol shall apply to a ship
8 referred to in paragraph (1)(A) operating in Antarctica.”.

9 (d) ADMINISTRATION.—Section 4(a) of the Act to
10 Prevent Pollution from Ships (33 U.S.C. 1903(a)) is
11 amended in the first sentence by inserting “, Annex IV
12 to the Antarctic Protocol,” immediately after “MARPOL
13 Protocol”.

14 (e) REGULATIONS.—Section 4 of the Act to Prevent
15 Pollution from Ships (33 U.S.C. 1903) is amended—

16 (1) in subsection (b)(1) by inserting “, Annex
17 IV to the Antarctic Protocol,” immediately after
18 “MARPOL Protocol”; and

19 (2) by adding at the end of subsection (b) the
20 following new paragraph:

21 “(3) The Secretary shall prescribe, within 2 years
22 after the effective date of the Antarctic Scientific Re-
23 search, Tourism, and Marine Resources Act of 1993, regu-
24 lations to implement Annex IV to the Antarctic Protocol,
25 regulations to ensure that all ships described in section

1 3(a)(1) and all other ships over which the United States
 2 has jurisdiction have contingency plans for marine pollu-
 3 tion incidents in Antarctica.”.

4 (f) SHIPBOARD RETENTION OF WASTES.—Section 6
 5 of the Act to Prevent Pollution from Ships (33 U.S.C.
 6 1905) is amended by adding at the end the following new
 7 subsection:

8 “(g) The Secretary shall ensure that all ships de-
 9 scribed in section 3(a)(1) and all other ships over which
 10 the United States has jurisdiction, before entering Antarc-
 11 tica—

12 “(1) have sufficient capacity in accordance with
 13 Annex IV to the Antarctic Protocol to retain on
 14 board, all oil, noxious liquid substances, and gar-
 15 bage; and

16 “(2) have concluded arrangements to discharge
 17 oil, noxious liquid substances, and garbage at recep-
 18 tion facilities outside of Antarctica.”.

19 (g) VIOLATIONS AND ENFORCEMENT.—Section 8 of
 20 the Act to Prevent Pollution from Ships (33 U.S.C. 1907)
 21 is amended—

22 (1) in subsection (a)—

23 (A) in the first sentence by inserting
 24 “Annex IV to the Antarctic Protocol,” imme-
 25 diately after “MARPOL Protocol,”; and

1 (B) by inserting immediately after the sec-
2 ond sentence the following: “The Secretary
3 shall cooperate with other parties to the Ant-
4 arctic Protocol in the detection of violations of
5 Annex IV to that Protocol and in the enforce-
6 ment of Annex IV.”;

7 (2) in subsection (b)—

8 (A) in the fourth sentence by inserting “or
9 Annex IV to the Antarctic Protocol as applica-
10 ble,” immediately after “MARPOL Protocol”;
11 and

12 (B) in the fifth sentence by inserting “or
13 a party to the Antarctic Protocol” immediately
14 after “MARPOL Protocol”; and

15 (3) in subsection (e)—

16 (A) in paragraph (2) by inserting “, of
17 Annex IV to the Antarctic Protocol,” imme-
18 diately after “MARPOL Protocol”;

19 (B) by redesignating paragraph (2) as
20 paragraph (3); and

21 (C) by inserting immediately after para-
22 graph (1) the following:

23 “(2) The Secretary may inspect at any time a ship
24 described in section 3(a)(1) or any other ship over which
25 the United States has jurisdiction, to verify whether that

1 ship has discharged oil, a noxious liquid substance, gar-
2 bage, or sewage in violation of Annex IV to the Antarctic
3 Protocol or in violation of any provision of this Act that
4 implements that Protocol.”.

5 (h) PENALTIES.—Section 9 of the Act to Prevent
6 Pollution from Ships (33 U.S.C. 1908) is amended—

7 (1) in subsection (a) by inserting “Annex IV to
8 the Antarctic Protocol,” immediately after
9 “MARPOL Protocol,”;

10 (2) in subsection (b) by inserting “Annex IV to
11 the Antarctic Protocol,” immediately after
12 “MARPOL Protocol,” any place it appears;

13 (3) in subsection (d) by inserting “Annex IV to
14 the Antarctic Protocol,” immediately after
15 “MARPOL Protocol,”;

16 (4) in subsection (e) by inserting “, Annex IV
17 to the Antarctic Protocol,” immediately after
18 “MARPOL Protocol”; and

19 (5) in subsection (f) by inserting “or to the
20 Antarctic Protocol” immediately after “MARPOL
21 Protocol” each place it appears.

22 **SEC. 17. AMENDMENT TO ANTARCTIC PROTECTION ACT OF**
23 **1990.**

24 Section 4 of the Antarctic Protection Act of 1990 (16
25 U.S.C. 2463) is amended by striking “Pending” and all

1 that follows through “activities, it” and inserting in lieu
2 thereof “It”.

3 **SEC. 18. RELATION TO EXISTING TREATIES, STATUTES,**
4 **REGULATIONS, AND PERMITS.**

5 (a) IN GENERAL.—Except as provided in subsection
6 (b), nothing in this Act shall be construed as contravening
7 or superseding—

8 (1) any international treaty, convention, or
9 agreement, if such treaty, convention, or agreement
10 is in force with respect to the United States on the
11 date of enactment of this Act; or

12 (2) any statute which implements any such
13 treaty, convention, or agreement.

14 (b) REPEAL.—The Antarctic Conservation Act of
15 1978 (16 U.S.C. 2401 et seq.) is repealed.

16 (c) SAVINGS PROVISIONS.—(1) Nothing in this Act
17 shall affect the authority of the Director—

18 (A) to support basic research investigations of
19 the Antarctic environment to understand globally
20 important processes; and

21 (B) to operate, in accordance with this Act,
22 United States facilities, bases, and stations in Ant-
23 arctica.

24 (2) All regulations issued under the Antarctic Con-
25 servation Act of 1978 (16 U.S.C. 2401 et seq.) shall re-

1 main in effect until superseded by regulations promul-
 2 gated under section 9 of this Act, or by revised regulations
 3 promulgated under the Act to Prevent Pollution from
 4 Ships, as amended by section 16 of this Act; except that
 5 if the regulations issued under the Antarctic Conservation
 6 Act of 1978 are inconsistent with the Protocol or have
 7 been superseded by the provisions of this Act, the Protocol
 8 and this Act shall control.

9 (3) All permits issued under the Antarctic Conserva-
 10 tion Act of 1978 (16 U.S.C. 2401 et seq.) shall remain
 11 in effect until they expire in accordance with the terms
 12 of those permits.

13 **SEC. 19. REPORT TO CONGRESS.**

14 Not later than 2 years after the date of enactment
 15 of this Act, the Director shall submit to the Committee
 16 on Commerce, Science, and Transportation of the Senate
 17 and the Committee on Merchant Marine and Fisheries of
 18 the House of Representatives a report on the implementa-
 19 tion of the Protocol and this Act.

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